UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA	***)***	
	)	
v.	***)***	***Criminal No. 04-120-P-S***
	)	
CARLOS MORALES,	***)***	
	)	
Defendant	***)***	

RECOMMENDED DECISION ON MOTION TO SUPPRESS

The defendant, Carlos Morales, charged with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e), Indictment (Docket No. 43) at 1, has filed a motion to suppress evidence seized as a result of his arrest on June 11, 2004 in Sanford, Maine. Defendant's Motion to Suppress Evidence, etc. (Docket No. 56) at 1. He contends Officer Adam Watson of the Sanford Police Department detained and arrested him on that day without probable cause. *Id*. at 2. An evidentiary hearing was held before me on February 17, 2005 at which the government called one witness. The defendant did not call any witnesses. Neither the government nor the defendant offered any exhibits. Based on the evidence adduced at the hearing, I recommend that the following findings of fact be adopted and that the motion to suppress be denied.

I. Proposed Findings of Fact

On March 16, 2003 Watson saw a green Ford Explorer with Maine license plate 1916LT traveling without an inspection sticker and with a broken taillight, each of which was a violation of Maine law. He stopped the vehicle and gave the driver, Ashley Viera, a verbal warning. At the time, the defendant was a

passenger in the right front seat of the vehicle and an infant was in the back seat. Watson recognized the vehicle as one that he had seen parked in front of 3 Island Avenue during his regular patrols on that street. The vehicle was registered to Sheila Viera who resided in North Berwick.

On June 11, 2004 Watson, who was in uniform and driving his marked police cruiser, saw the same Explorer traveling toward him on Cottage Street in Sanford. He saw that the driver was a black male. Because he could not turn around immediately to follow the vehicle, Watson, who assumed that the vehicle was headed to 3 Island Avenue, took a different route toward that address in order to determine whether the defects he had warned the driver about in March had been fixed. Watson then saw the Explorer heading toward him on North Avenue. The vehicle quickly turned right onto Sherburne Street and Watson turned left onto that street in order to follow it. When Watson turned onto Sherburne Street, a short, straight street, the Explorer was not in sight. A person on the porch of a house at the corner of Sherburne Street and North Avenue, to Watson's left as he turned onto Sherburne Street, told Watson, whose window was open, that the Explorer had turned onto Island Avenue. Island Avenue is clearly marked as a one-way street, and a driver turning onto Island Avenue from Sherburne Street could only travel on Island Avenue the wrong way.

Watson drove down Island Avenue the wrong way himself and saw the Explorer in the parking lot at 3 Island Avenue. The only way the Explorer could have reached that parking lot in the brief period of time that it was out of Watson's view would have been by traveling down Island Avenue the wrong way. When Watson first saw the Explorer in the parking lot, a black male was standing beside the open door on the driver's side. Watson activated the blue lights on his cruiser and pulled up behind the Explorer. At this point Watson had decided to detain the driver of the Explorer. The black male started to walk away quickly. Watson ordered him to return and asked for his license and the Explorer's registration.

The black male, who is the defendant, said that his name was Carlos Morales and that he did not have a license, nor had he ever had one. Watson arrested the defendant for operating without a license. This was the first time that Watson had ever stopped a motorist for going the wrong way on a one-way street without personally observing that conduct.

A firearm was found and seized incident to the arrest of the defendant, which followed his detention by Watson.

II. Discussion

The government conceded at the close of the hearing that a *Terry*-type[1] stop occurred when Watson asked the defendant to return to the Explorer. "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806, 810 (1996). Counsel for the defendant contended at the hearing that the applicable test under *Whren* is not merely whether probable cause existed,[2] but also whether a reasonable officer would have stopped a vehicle for the violation at issue under the circumstances. In fact, the Supreme Court rejected that test in *Whren*. *Id*. at 810-18. While every Fourth Amendment case "turns upon a 'reasonableness' determination," which involves a balancing of all relevant factors, the result of that balancing is usually not in doubt when the seizure is based on probable cause. *Id*. at 817.

> Where probable cause has existed, the only cases in which we have found it necessary actually to perform the "balancing" analysis involved searches or seizures conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests — such as, for example, seizure by means of deadly force, unannounced entry into a home, entry into a home without

[1] *Terry v. Ohio*, 392 U.S. 1 (1968).
[2] The probable cause justifying a lawful custodial arrest need not be for the charge eventually prosecuted. *United States v. Bizier*, 111 F.3d 214, 218 (1st Cir. 1997).

> a warrant, or physical penetration of the body. The making of a traffic stop out of uniform does not remotely qualify as such an extreme practice, and so is governed by the usual rule that probable cause to believe the law has been broken "outbalances" private interest in avoiding police contact.

Id. at 818 (citations omitted). The seizure of the defendant in this case similarly does not remotely qualify as an extreme practice.

> In determining whether action taken by a police officer is constitutionally permissible as part of a *Terry* stop, we consider (1) whether the officer's action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

United States v. Moore, 235 F.3d 700, 703 (1st Cir. 2000) (citation and internal quotation marks omitted).

With respect to the first consideration, which is the only one implicated by the defendant's argument, counsel for the defendant cited no authority in support of the proposition that a police officer must personally observe a traffic violation in order to have probable cause to detain a driver. My research has located no such authority. All that federal constitutional law requires is that the stop in question be supported by a reasonable and articulable suspicion that the vehicle had been traveling in violation of a traffic law. *United States v. Fox*, 393 F.3d 52, 59 (1st Cir. 2004).

Driving on a street posted for one-way traffic in a direction opposite to that designated violates Maine law. 29-A M.R.S.A. § 2059. Watson, turning onto a short, straight street immediately after he had seen the Explorer turn onto that street, could not see the Explorer. A bystander informed him that the Explorer had turned onto a connecting street, Island Avenue. In making that turn, the driver of the Explorer could only have been driving the wrong way on Island Avenue, which was posted as a one-way street heading into Sherburne Street. When Watson himself immediately drove down Island Avenue the wrong way, he found the Explorer in the parking lot of 3 Island Avenue and knew, from his familiarity with the

streets in the immediate area which he regularly patrolled, that the Explorer could only have reached the parking lot in the time that had elapsed since he saw it turn into Sherburne Street if it had been driven down Island Avenue the wrong way. These facts gave Watson a reasonable and articulable suspicion that the Explorer had been traveling the wrong way on Island Avenue in violation of Maine law. The facts that Watson had seen a black male driving the Explorer just before it turned onto Sherburne Street and that a black male was standing beside the open driver's door of the Explorer when Watson saw it in the parking lot gave him a reasonable and articulable suspicion that the defendant had been the driver who committed the violation. Nothing more was required to render Watson's seizure of the defendant constitutionally valid.

III. Conclusion

For the foregoing reasons, I recommend that the motion to suppress be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 18th day of February 2005.

/s/ David M. Cohen
David M. Cohen
United States Magistrate Judge

Defendant

CARLOS MORALES (1) represented by **ANTHONY J. SINENI, III**

701 CONGRESS ST
PORTLAND, ME 04102
772-9053
Email: peter@sineni.com

PETER J. CYR
LAW OFFICE OF ANTHONY J. SINENI
701 CONGRESS STREET
PORTLAND, ME 04102
772-9053

Plaintiff

USA

represented by **DARCIE N. MCELWEE**
OFFICE OF THE U.S. ATTORNEY
DISTRICT OF MAINE
P.O. BOX 9718
PORTLAND, ME 04104-5018
Email: darcie.mcelwee@usdoj.gov